

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9
10 IN RE: Bard IVC Filters Products
11 Liability Litigation,

No. MDL 15-02641-PHX-DGC

12 **ORDER**

13 The Court previously dismissed multiple cases from this MDL for lack of subject
14 matter jurisdiction. *See* Docs. 20667, 21461, 21759. The parties have filed an updated
15 status report identifying 29 additional cases for which no federal jurisdiction exists.
16 Docs. 21726 at 2-3, 21726-3. For reasons stated below, the Court will dismiss those cases
17 without prejudice.

18 Federal subject matter jurisdiction may be based on either federal question
19 jurisdiction or diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. Courts “analyze federal
20 question jurisdiction with reference to the well-pleaded complaint rule.” *Yokeno v. Mafnas*,
21 973 F.2d 803, 807 (9th Cir. 1992). Under that rule, “federal jurisdiction exists only when
22 a federal question is presented on the face of a properly pleaded complaint.” *Scholastic*
23 *Entm’t, Inc. v. Fox Entm’t Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003). The complaint
24 must establish either that “federal law creates the cause of action or that . . . the plaintiff’s
25 right to relief necessarily depends on resolution of a substantial question of federal law.”
26 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*
27 *Easement*, 524 F.3d 1090, 1102 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr.*
28 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

1 The master complaint in this MDL asserts seventeen state law claims. Doc. 364
 2 ¶¶ 166-349. Because the complaint asserts no federal claim and Plaintiffs’ right to relief
 3 on the state law claims does not depend on resolution of a federal law question, the Court
 4 lacks subject matter jurisdiction under the federal question statute. *See* 28 U.S.C. § 1331;
 5 *Yokeno*, 973 F.2d at 809.

6 Subject matter jurisdiction must therefore be based on diversity of citizenship. *See*
 7 *Yokeno*, 973 F.2d at 809. District courts have diversity jurisdiction over cases between
 8 citizens of different states involving claims greater than \$75,000. 28 U.S.C. § 1332(a).
 9 Section 1332 requires complete diversity between the parties – that is, the citizenship of
 10 the plaintiff must be diverse from the citizenship of each defendant. *See Caterpillar, Inc.*
 11 *v. Lewis*, 519 U.S. 61, 68 (1996).

12 For purposes of diversity jurisdiction, Defendant C. R. Bard, Inc. is a citizen of New
 13 Jersey and Defendant Bard Peripheral Vascular, Inc. is a citizen of Arizona. *See* Doc. 364
 14 ¶¶ 11-12; *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (noting
 15 that “a corporation is a citizen of any state where it is incorporated and of the state where
 16 it has its principal place of business”) (citing 28 U.S.C. § 1332(c)). Complete diversity
 17 does not exist, therefore, where the Plaintiff is a resident of either Arizona or New Jersey
 18 and has sued both C.R. Bard and Bard Peripheral Vascular. *See Williams v. United*
 19 *Airlines, Inc.*, 500 F.3d 1019, 1025 (9th Cir. 2007) (“Although diversity jurisdiction
 20 provides an independent basis for federal jurisdiction over state law claims, complete
 21 diversity is lacking in this case because both [plaintiff] and [defendant] are citizens of
 22 California.”).

23 The parties’ identify 29 pending cases in which diversity jurisdiction does not exist.
 24 Docs. 21726 at 2-3, 21726-3 (Ex. C).¹ A district court may dismiss a case for lack of
 25 subject matter jurisdiction at any time during the pendency of the action. *See Fed. R. Civ.*

26
 27 ¹ The parties initially identified 30 such cases, but counsel for Defendants has
 28 informed the Court that one case, *Shane Tice v. Bard Peripheral Vascular, Inc.*, CV-16-
 00832, was included in error (diversity jurisdiction exists because Tice is a New Jersey
 resident and has sued only Bard Peripheral Vascular, a citizen of Arizona). This case will
 be transferred to the New Jersey district court. *See* Doc. 21726 at 2.

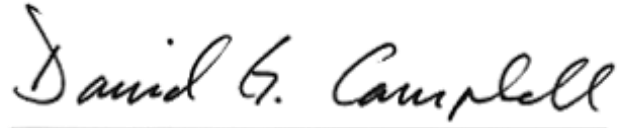
P. 12(h)(3); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (noting that Rule 12(h)(3) permits a district court to “raise the question of subject matter jurisdiction[] sua sponte”); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230-31 (9th Cir. 2006) (an MDL “transferee judge exercises all the powers of a district judge in the transferee district under the Federal Rules of Civil Procedure”). The following cases lack subject matter jurisdiction and are **dismissed without prejudice**:

	Case Caption	Case Number	Plaintiff's Residence
1	Stephen Alaimo v. C. R. Bard, Inc., et al.	2:18-cv-02519	New Jersey
2	Clifton Atkins v. C. R. Bard, Inc., et al.	2:18-cv-02592	Arizona
3	Mostafa Badawi v. C. R. Bard, Inc., et al.	2:17-cv-01853	New Jersey
4	Richard Barela v. C. R. Bard, Inc., et al.	2:17-cv-02466	Arizona
5	Jennifer Bounassi v. C. R. Bard, Inc., et al.	2:19-cv-04084	New Jersey
6	Julie Bozak v. C. R. Bard, Inc., et al.	2:16-cv-03290	Arizona
7	Matthew Brown v. C. R. Bard, Inc., et al.	2:17-cv-02981	Arizona
8	Theressa Campbell v. C. R. Bard, Inc., et al.	2:19-cv-02658	New Jersey
9	Daniel Dipasquale v. C. R. Bard, Inc., et al.	2:19-cv-03292	New Jersey
10	Maria Garcia v. C. R. Bard, Inc., et al.	2:18-cv-01806	New Jersey
11	Priscilla Grainger v. C. R. Bard, Inc., et al.	2:19-cv-00395	New Jersey
12	Richard Hand v. C. R. Bard, Inc., et al.	2:18-cv-00401	New Jersey
13	Brian Hinchey v. C. R. Bard, Inc., et al.	2:19-cv-02757	New Jersey
14	Frances Hubler v. C. R. Bard, Inc., et al.	2:18-cv-01821	New Jersey
15	Teyrance Jackson v. C. R. Bard, Inc., et al.	2:19-cv-03879	New Jersey
16	John Lane v. C. R. Bard, Inc., et al.	2:16-cv-04216	Arizona
17	Glenn Malloff v. C. R. Bard, Inc., et al.	2:18-cv-01651	Arizona
18	John Osborn v. C. R. Bard, Inc., et al.	2:18-cv-01380	Arizona
19	Celeste Paige v. C. R. Bard, Inc., et al.	2:19-cv-02672	New Jersey
20	Shakina Rainey v. C. R. Bard, Inc., et al.	2:18-cv-02702	New Jersey
21	Jeffery Raleigh v. C. R. Bard, Inc., et al.	2:16-cv-04259	Arizona

22	Michelle Raub v. C. R. Bard, Inc., et al.	2:19-cv-03884	New Jersey
23	Kenneth Russ v. C. R. Bard, Inc., et al.	2:19-cv-03795	Arizona
24	Jovanna Sagastume v. C. R. Bard, Inc., et al.	2:17-cv-04435	New Jersey
25	Beverly Stokes v. C. R. Bard, Inc., et al.	2:16-cv-04294	New Jersey
26	Paul Tillson v. C. R. Bard, Inc., et al.	2:17-cv-02185	Arizona
27	Kenneth VanLuvender v. C. R. Bard, Inc., et al.	2:19-cv-02355	New Jersey
28	Kim Wesson v. C. R. Bard, Inc., et al.	2:19-cv-04104	Arizona
29	Sharlene Williams v. C. R. Bard, Inc., et al.	2:18-cv-03196	New Jersey

IT IS SO ORDERED.

Dated this 11th day of December, 2020.



David G. Campbell
Senior United States District Judge